me draw any such inference. On the contrary, if I consider anything outside, my doubts are only strengthened."

That case was one of Interpleader and it was held that the Crown could not be made a party to an interpleader issue but that while the question whether the ship was the property of the Crown or the judgment debtors remained undetermined the Sheriff would not be ordered to withdraw from the execution.

This case seems to be relevant and I can see no reason why the action should not proceed to judgment, such action being against the ship itself.

In my opinion the motion fails and should be dismissed but I make no order as to costs.

Motion dismissed.

SOON SIONG POH v. YEO SIEW LAM AND ANOTHER.

[Orig. Civ. Juris. (Taylor, J.) May 27, 1949]

[Singapore — Civ. Suit No. 596 of 1948]

Control of Rent Ordinance, 1947, ss. 14 and 15 — Subletting not prohibited but excessive rents received — Discretion of Court.

Taylor, J. in this case held that a tenant who is not prohibited from subletting but receives from his sub-tenants rents exceeding three-quarters of the rent paid by him is liable to be ejected at the discretion of the Court but where he has incurred substantial expenditure for repairs the Court may postpone the operation of the Order so as to spread the cost of repairs over a reasonable period.

Case referred to:—

(1) *Chen Chi Ya v. K. Nagappan,* (1949) M.L.J. 164.

ACTION.

N. A. Mallal for the plaintiff.

Chong Thutt Pitt for the defendants.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Taylor, J. : — This is an action for possession of house No. 101 Jervois Road. The plaintiff is the owner. The defendants are in occupation of part of the house and claim to be protected tenants.

The history of the matter begins in 1946. The house had suffered war damage and was let to one Ng Say Kiong, from 1st November, 1946, on the footing that the tenant would undertake essential repairs. There was no written agreement and no stipulation against assignment or subletting. On 5th October, 1946, Ng Say Kiong entered into a written agreement with two other persons to share the house. The agreed translation of this instrument reads, so far as material, as follows :—

"Whereas the two defendants and Ng Say Kiong have jointly rented No. 101 Jervois Road at $100 per month it is agreed that they are to pay $40, $40 and $20, respectively; the light and water bills shall be shared equally; the cost of repairs, $1,500, shall also be shared equally."

The three parties moved in with their families. The house was not divided into three self contained flats and they did not live together as a joint household. The living rooms were separately appropriated and food was bought and cooked in three separate lots; they all used the kitchen, the garden and probably the entrance hall and stairs, in common.

There was a garage with two rooms over it which were undamaged. These were separately sublet by Ng Say Kiong from 3rd November, 1946, at $25 per month to one Koh Huan Choo, who was still living there at the date of the trial. He is not a party. He was subpœnaed by both sides and was called for the plaintiff. He seemed to me a reliable witness.

In or about June 1947, Ng Say Kiong went to China, taking his family with him, and a friend of his, Ong Kim Seng, took over his share of the house and is still there, paying, he says, $20 per month, subject to an oral undertaking to vacate if and when Ng Say Kiong should return to Singapore and wish to resume occupation.

Ng Say Kiong has no intention to return at any date which can be even roughly indicated. In fact he is seeking merely to retain a kind of contingent free option to return, in case he might wish to do so.

The plaintiff purchased the house in June 1948, not as an investment but intending to occupy it with his family. He inspected it on several occasions but may not have discovered all the facts. He knew from his vendors that the house was let to Ng Say Kiong and he was informed that the tenancy agreement contained a clause against subletting but this was a mistake; in fact there never was any such clause.

Notice of the sale was given to the occupiers and on 2nd July, 1948, the first defendant and Ong Kim Seng saw the plaintiff at his place of business. They said that Ng Say Kiong was a sea-faring man and was away from Singapore and they tendered the rent on his behalf. The plaintiff accepted the rent and gave them a receipt in the name of Ng Say Kiong with an endorsement prohibiting subletting.

The second defendant is in fact a sea-faring man and was genuinely absent but his family were and are residing in the house.

It is sufficiently clear that the plaintiff never regarded anyone other than Ng Say Kiong as the true tenant and never acquiesced in any subletting but this is of little moment because the material transaction had already taken place before the plaintiff bought the house.

The plaintiff now claims possession on the ground that the defendants are trespassers or alternatively that Ng Say Kiong, the tenant, is not in occupation by himself or his family.

The defendants contend that they are tenants (not sub-tenants) by virtue of the agreement of 5th October. The main questions therefore are as to construction and effect of that agreement.

Now in the first place the instrument recites that the three parties had jointly rented the house. This is not correct. They had not jointly rented the house. It was let to Ng Say Kiong and rented by him alone. The then owners never knew or dealt with anyone else and they never knew anything about this agreement.

The argument of counsel for the defendant was that the original owner granted an assignable tenancy to Ng Say Kiong; that Say Kiong then formed a firm consisting of himself and two defendants; that he assigned the tenancy to this firm; that when Say Kiong went to China the firm sublet his rooms to Ong Kim Seng.

This is ingenious but it is not correct. It may be that a tenancy can be granted to a firm as such but is very seldom done. Where business premises are let for the purposes of a firm the tenancy is usually granted to one member personally. But however that may be, in this case there never was a firm. Partnership involves carrying on a business. It is true that there can be a single venture partnership but even that must have profit in view. The foundation of partnership is a joint aim at commercial profit. This agreement has no such aim. It is a "business agreement" in the colloquial sense that it regulates the financial relations of the parties, but it does so only in respect of their domestic affairs. There may be a material benefit but there is no element of joint commercial profit. It is not in law a partnership. Moreover the three parties did not occupy the house jointly; each had is own separately appropriated portion.

Construed according to their intentions, as evidenced by their conduct, the instrument amounts to this. Ng Say Kiong was the legal tenant of the owner and was not debarred from subletting; he chose to become what is commonly called a "chief tenant"; he sublet certain specified rooms to the other two parties retaining certain other rooms for himself and granted to the other two a licence to use the kitchen and garden jointly with his own family. This arrangement was lawful, and indeed it is a common one. Had it continued unchanged the present action might not have arisen but in or about June 1947, Ng Say Kiong, the chief tenant, went to China taking his family. The date is fixed by Koh Huan Choo and Ong Kim Seng both of whom also say that ever since his departure they have paid their rents to first defendant. I do not accept the suggestion that Ng Say Kiong has a genuine intention to return. It is only a fictitious attempt to keep him in the picture for the purpose of the suit. Their actions show that in truth he assigned the chief tenancy to Yeo Siew Lam who thereupon sublet Ng Say Kiong's rooms to Ong Kim Seng. In his evidence Ong Kim Seng explicitly denied that there was any assignment or subletting to him; he contends that the arrangement with himself was purely social or friendly, not contemplating any legal consequences. I do not accept this view; he is at the least under a legal liability to pay his share of the rent, so long as he continues in occupation.

I find therefore that the original tenant first of all sublet, and later assigned. The present tenant is Yeo Siew Lam. Khoo Teng Khim and Ong Kim Seng are sub-tenants.

In *Chen Chi Ya v. Nagappan*[1] I pointed out that assignment and subletting are two quite different things, dealt with by separate provisions of the Ordinance and I also discussed at some length the principles on which the Ordinance is to be construed and applied.

The main difference between the two cases is one of fact. In *Chen Chi Ya* the original tenancy contained a clause prohibiting assignment and subletting. In this case the original tenancy contained no such prohibition.

Section 14 (i) *(j)* provides that where the tenant, having sublet, receives rents (excluding Municipal charges paid by him) exceeding three-quarters of the landlord's rent, the landlord may, at the discretion of the Court, recover possession.

The reason for the reference to Municipal charges is a practical one. Where these charges are paid separately the point does not arise but in the common case of subletting rooms in a shop-house to six or eight sub-tenants it is impossible for these charges to be strictly apportioned, the chief tenant therefore lets to

each sub-tenant at a fixed rent, inclusive of water and light. He himself pays the net rent to the landlord and the total water and light bill to the Municipality. The difference represents his own share of both, thus :—

Payments:	Rent to landlord	$100.00
	Municipal Bill	20.00
		$120.00
Receipts:	6 Sub-tenants at $15 each	$ 90.00
	Chief tenant's own share	30.00
		$120.00

The net receipts are $90 less $20, i.e. seventy *per centum* of the rent. Whether this is fair and reasonable depends, of course, on how much of the accommodation is reserved for the chief tenant himself.

If he raises each sub-tenant's rent to $20, and none of them leave, the receipts and payments will balance so that the chief tenant is living rent free at the expense of the sub-tenants. The landlord cannot raise his rent, the poorest of the three parties is being exploited by the middleman.

The Ordinance therefore lays down the rule that unless the chief tenant pays at least a quarter of the rent himself he is liable to be ejected. The Court has a discretion to cover cases where the chief tenant's own portion of the house is so small that the arrangement as a whole is fair.

Now in this case the agreement between the three occupants of the main building requires them to pay the Municipal bill separately in equal shares but the out-building is let to Huan Choo at an inclusive rent. Consequently both systems are used concurrently in the one house.

We do not know exactly what the Municipal charges are but the first defendant said that he meets them from the $25 paid by Huan Choo. The average water and light bill therefore cannot exceed $24 and is probably less.

The matter is complicated by the fact that rent at the date of the agreement was $100 but the present rent is $120. Counsel wholly failed to appreciate the importance of this point and the facts were not fully elicited.

Under the agreement, Say Kiong's share of the rent was $20 and as he received $25 from Huan Choo, he was living not only rent free but with virtually free services.

The present position is different because Siew Lam has become the chief tenant. As he relies on the agreement it is reasonable to infer that the revised rent is shared in the same proportions, *viz.* 48, 48 and 24. The rent receipts shew that Huan Choo is still paying $25; no part of the increase has been passed on to him. On this basis Siew Lam's account stands thus :—

Receipts:	Teng Kim	$48 + $8 = $ 56
	Kim Seng	$24 + $8 = 32
	Huan Choo	25
		$113
Less — Municipal Bill		24
		$ 89

Three-quarters of the present rent is $80.

Even if it is assumed, contrary to the probabilities, that Kim Seng is still paying only $20, Siew Lam's net receipts are $85. Moreover this is taking the Municipal charges at the highest possible figure consistent with the evidence. In so far as they are less than $24 the profit made by Siew Lam is greater. On any view he is not paying his full share.

There is a further complication in that the three parties paid for the restoration of the war damage. The amount was stated in the agreement to be $1,500 but this was an estimate only; the work had not then been done.

It was suggested that the clause against assignment was deliberately omitted from the agreement with the previous landlord so that in the event of Say Kiong having to leave, he could recover a proportion of this expenditure from a sub-tenant or assignee. As a matter of evidence I am not satisfied that the omission was intentional but, however, that may be, I think it is a factor to be taken into account in considering whether the present tenant should be ejected.

The plaintiff paid $25,000 for the house at an auction and he did so knowing that there was some doubt as to whether or when he could obtain vacant possession. The question whether repairs were likely to cost another thousand or so cannot have influenced him very much in his bidding. From the point of view of these tenants, however, the repairs meant that they had to pay double rent for about a year. They are not entitled to remain indefinitely, but they may reasonably be allowed to spread that expenditure over a period. What that period should be is a matter of opinion but in the circumstances of this case I think three years sufficient.

I find therefore as facts, that the first defendant is the tenant of the plaintiff; that the second defendant, and also Ong Kim Seng and Koh Huan Choo are sub-tenants under the first defendant and that the first

defendant receives sub-rents in excess of seventy-five *per centum* of the rent paid by him.

The first defendant is therefore liable to be ejected but taking into consideration the expense of repairs incurred by him and to give some opportunity to find other accommodation, I think he should be allowed to remain till the end of September next.

As the tenancy did not prohibit assigning or sub-letting, the sub-tenants are protected by section 15 and cannot be ejected at this stage but will become direct tenants of the plaintiff.

I fully realise that the rooms separately sublet cannot in fact be occupied without joint use of the kitchen which is always unsatisfactory and is not even workable except among congenial people. Recovery of the first defendant's rooms only may therefore be of little practical benefit to the plaintiff. It is, however, the result of applying the law to the facts as found and in my view it is consistent with the spirit of the statute. The basic fact is that there are not enough houses. It may be hard for the plaintiff that he cannot obtain possession of the house which he has bought but it would also be hard to throw out three families in order to put in one. Possibly some compromise may be arranged.

I must point out, however, to the defendants and others concerned that though the original tenancy was assignable, the present one may not be. Unless they can agree, the parties should consult their solicitors on this point before taking any other step.

The first defendant must yield possession of No. 101 Jervois Road on or before the 30th September, 1949 with vacant possession of the portions now occupied by him.

The order will not be enforceable against the second defendant, who is a sub-tenant of the first defendant.

On the taking effect of this order the second defendant, if he remains in possession, and also Ong Kim Seng and Koh Huan Choo, will become tenants of the plaintiff of the portions now occupied by them, with the same licences and at the same sub-rents, subject to any Order of the Rent Conciliation Board.

There will be no declaration as to whether or to what extent, if any, the tenants or sub-tenants are prohibited from further assigning or sublettling their respective interests.

All parties to the suit and the present sub-tenants will be at liberty to apply in respect of any change in the sub-tenancies which may have taken place since the date of service of the writ.

The first defendant must pay the plaintiff's taxed costs. The second defendant must pay his own separate costs, if any.

Order accordingly.

CHAIM FLANCHAUM v. KOH PENG KOON.

[Orig. Civ. Juris. (Gordon-Smith, J.) May 28, 1949]

[Singapore — Suit No. 58 of 1948]

Negligence — Negligent driving — Damages in respect of injuries arising out of road accident.

In this suit the Plaintiff sued the Defendant for $2,000/- special and $18,000/- general damages in respect of injuries caused to him arising out of a road accident which occurred on the 19th June 1947 when crossing the road at the junction of Robinson Road and Cecil Street, Singapore. Para. 3 of the Statement of Claim alleged that such injuries were caused by a motor vehicle, a jeep belonging to the Defendant or his agent or servant then in charge and control of the said motor vehicle.

Held, (1) if it is established from his own evidence or by evidence produced on behalf of the Defendant that the Plaintiff could have avoided the collision by the exercise of reasonable care, then the Plaintiff fails because his injury is due to his own negligence in failing to take reasonable care; (2) if it is established that although the Plaintiff was negligent, the Defendant could have avoided the collision by the exercise of reasonable care, then it is the Defendant's failure to take that reasonable care to which the resulting damage is due and the Plaintiff is entitled to recover; (3) mere failure to avoid the collision by taking some extraordinary precaution does not in itself constitute negligence; the Plaintiff has no right to complain if in the agony of the collision the Defendant fails to take some step which might have prevented a collision, unless that step is one which a reasonably careful man would fairly be expected to take in the circumstances. Claim was dismissed.

Case referred to:—

(1) *Swadling v. Cooper* (1931) A.C. 1.

CIVIL SUIT for damages.

A. N. Mitra for the plaintiff.

L. A. J. Smith for the defendant.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Gordon-Smith, J. : — In this suit the Plaintiff by Writ of Summons dated 6th February 1948, sues the Defendant for $2,000 Special and $18,000 general damages in respect of injuries caused to him arising out of a road accident which occurred on the 19th June 1947 when crossing the road at the junction of Robinson Road and Cecil Street, Singapore.

Para. 3 of the Statement of Claim alleges that such injuries were caused by a Motor Vehicle, a Jeep S. 7246 belonging to the defendant in consequence of its